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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,376	10/25/2005	David Fenn	SWIN 3307	8192
7812 7590 08/20/2008 SMITH-HILL AND BEDELL, P.C. 16100 NW CORNELL ROAD, SUITE 220 BEAVERTON, OR 97006				
EXAMINER				
HUYNH, LOUIS K				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
08/20/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/549,376

**Applicant(s)**

FENN, DAVID

**Examiner**

Louis K. Huynh

**Art Unit**

3721

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31, 37, 38 and 46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31, 37, 38 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/14/2008 has been entered.

### ***Status of the Claims***

- Claims 1-30, 32-36, 39, 40, 42-45 & 49-57 were previously cancelled.
- Claims 41, 47, 48 & 58-60 were cancelled by the reply filed 7/14/2008.
- Claims 31, 37, 38 & 46 are currently pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 31, 37, 38 & 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 31, lines 22-23: "the closed position" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 31, 37, 38 & 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balzer et al. (US 3,823,054) in view of Perloff (US 4,835,945).

- With respect to claims 31, 59 & 60, Balzer discloses an apparatus for sealing a substantially planar film (24) to a packaging tray (43) comprising: a base (10) having a planar support member (42) that has a pocket for receiving a packaging tray (43); a lid (58) hinged to the base (10); an electric heating elements embedded in a silicon rubber pad (col. 3, lines 23-35) and attached to the lid (58); a switch (94) that causes an electric current to flow through the heating elements (col. 4, lines 5-10); a temperature control (86) that preset the sealing temperature which serve to regulate electric current flowing through the heating elements in response to the temperature of the heating elements; wherein the heating elements embedded in the silicon pad trace a path over the surface of the planar support member (42) which encircles the pocket in the planar support member (42) (col. 3, lines 27-35; FIG. 5). The apparatus of Balzer meets all of applicant's claimed subject matter but lacks the specific teaching of the support member including a plurality of pockets for accommodating a plurality of receptacles formed on the

packaging tray. Perloff discloses a sealing apparatus for sealing a card (54) to a plastic sheet (48) having a planar part and a plurality of receptacle (52); wherein the sealing apparatus of Perloff comprises a support member (12) having a planar part and a plurality of pockets (46) formed thereon for receiving the plurality of receptacles (56) of the plastic sheet (48), and a hinged lid (28) for sandwiching the card (54) and the plastic sheet against the support member (12). The apparatus of Perloff utilize pressure adhesive coated on a surface of the card (54) to seal the card (54) to the plastic sheet (48) without using heat; however, Perloff teaches the desire for sealing plastic sheet having a plurality of receptacles to form a blister package by placing the plastic sheet (48) on the support member (12) to expose only the planar part of the plastic sheet to the hinged lid (28) of the sealing apparatus such that the planar part of the plastic sheet (48) withstands the pressure from the hinged lid (28) during the forming of a seal on the planar part of the plastic sheet (48) that encircles each of the plurality of receptacles (56). Therefore, it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the apparatus of Balzer by having provided the support member with a plurality of pockets in order to accommodate a plurality of receptacles on a blister packaging sheet, as taught by Perloff, and to have configured the heating elements to trace a path that would encircle each of the receptacles, as taught by Balzer at col. 3, lines 23-35, so that each of the receptacles of the blister packaging sheet would be sealed, as taught by Perloff. Regarding the heating elements being formed from etched foil, it would have

been obvious to a skilled person in the art as a matter of engineering desired choice to form the heating elements from etched foil because heating elements can be formed from either etched foil, stamped elements, wound wire serpentine or thin metallic sheets, each of which would yield the same result; and since the heating elements being formed from etched foil does not solve any stated problem insofar as the record is concerned, it does not patentably distinguish the claimed invention over the applied prior art. The apparatus of Balzer is not disclosed to have a catch means including latch member on the base and lid for holding the lid and the base firmly together in the closed position. The reference to Perloff teaches a catch means comprising a pressure bar (22) mounted to the support member (12) and a sloped camming surface (38) mounted on the hinged lid (28) for holding the hinged lid (28) firmly to the support base (12) in order to firmly pressing the card (54) and the plastic sheet (48) there between. It is known in the art of heat sealing that pressure must be applied firmly in a controlled manner while heating to seal the thermoplastic together in order to produce a complete and good seal; therefore, it would have been obvious to a skilled person in the art, at the time of the invention was made, to have also modified the apparatus of Balzer by having provided the catch means of Perloff for firmly holding the lid and the base together in order to provide constant pressure to the film and the packaging tray sandwiched between the lid and the base.

- With respect to claim 37 & 38, the modified apparatus of Balzer would include the lid (58) hinged to the base (10) between an open position and a closed position.
- With respect to claim 46, the modified apparatus of Balzer is for sealing a plastic film (24) to a thermoformed packaging tray (43), the heating elements in the modified machine of Balzer is full capable of being adapted to heat plastic film to the sealing temperature, and the optimal sealing temperature is well within the knowledge of a skilled artisan; therefore, the heating elements being adapted to heat the contacted area to a temperature of at least 100°C would have been obvious to the skilled artisan in order to seal the plastic film to the blister packaging sheet.

#### ***Response to Arguments***

6. Applicant's arguments with respect to claim 31 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is 571-272-4462. The examiner can normally be reached on M-F from 8:00AM to 3:00PM.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 15, 2008

/Louis K. Huynh/  
Primary Examiner  
Art Unit 3721